

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NICKEY HENDERSON,

Petitioner,

v.

**NATHANIEL QUARTERMAN, Director
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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Civil Action No. 3:06-CV-0847-L

ORDER

This is a habeas case brought under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On December 1, 2006, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) were filed. Petitioner has not objected to the Report.

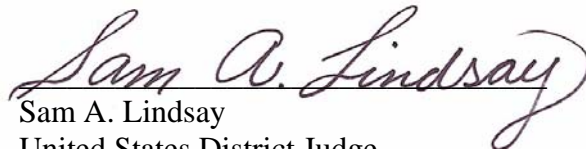
In 2001, Petitioner pled guilty to possession of a controlled substance and was placed on deferred adjudication. The State later moved to adjudicate guilt and on May 15, 2003, the trial court adjudicated him guilty and sentenced him to a term of 25 years imprisonment. Petitioner filed an application for post-conviction relief in state court, which was denied. Petitioner filed this federal petition for writ of habeas corpus on May 8, 2006.

Petitioner argued that the trial court erred in not holding a competency trial and that his attorney rendered ineffective assistance in failing to move for such a trial. The trial court had convened a hearing at which an evaluating psychiatrist testified that Petitioner was competent to

stand trial. The magistrate judge found Petitioner's argument that the trial court erred in failing to empanel a jury to determine his competency fails to present a cognizable basis for habeas corpus relief. Additionally, the magistrate judge found that any request for a competency jury which Petitioner's counsel might have made in light of the psychiatrist's findings would have been futile, if not patently frivolous. The magistrate judge recommends that Petitioner's application for writ of habeas corpus be denied and dismissed.

After making an independent review of the pleadings, file and record in this case, and the findings of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are correct. They are therefore accepted as those of the court. Accordingly, the court **denies** Petitioner's Petition for Writ of Habeas Corpus and **dismisses** this action with prejudice.

It is so ordered this 18th day of December, 2006.


Sam A. Lindsay
United States District Judge